



4910-13

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Docket No. FAA-2020-0862

COVID-19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Winter 2020/2021 Scheduling Season

AGENCY: Department of Transportation (DOT), Federal Aviation Administration (FAA).

ACTION: Notice of proposed extension of limited waiver of the minimum slot usage requirement.

SUMMARY: The FAA proposes to extend through March 27, 2021, the coronavirus disease 2019 (COVID-19)-related limited waiver of the minimum slot usage requirement at John F. Kennedy International Airport (JFK), New York LaGuardia Airport (LGA), and Ronald Reagan Washington National Airport (DCA) that the FAA has already made available through October 24, 2020, with additional conditions as described below. The FAA also proposes to extend, through December 31, 2020, its COVID-19-related policy for prioritizing flights canceled at designated International Air Transport Association (IATA) Level 2 airports in the United States, for purposes of establishing a carrier's operational baseline in the initial months of the next corresponding season, also with additional conditions as described below. These IATA Level 2 airports include Chicago O'Hare International Airport (ORD), Newark Liberty International Airport (EWR), Los Angeles International Airport (LAX), and San Francisco International Airport (SFO). This notice affords interested persons an opportunity to submit comments and

any relevant information on the FAA’s proposal. The FAA anticipates subsequently providing notice of its final decision.

DATES: Submit comments on or before [INSERT DATE 7 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit comments and supporting data e-mail to the Slot Administration Office at 7-awa-slotadmin@faa.gov.

FOR FURTHER INFORMATION CONTACT: Bonnie Dragotto, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; telephone: (202) 267-3808; e-mail: bonnie.dragotto@faa.gov.

SUPPLEMENTARY INFORMATION:

Previous Waiver Relief Related to COVID-19

In a notice published in the Federal Register on March 16, 2020 (85 FR 15018), the FAA announced certain relief through May 31, 2020, in light of impacts on air travel demand related to the outbreak of the novel coronavirus disease 2019 (COVID-19). As announced in that notice, through May 31, 2020, the FAA waived the minimum usage requirement as to any slot associated with a scheduled nonstop flight between JFK, LGA, or DCA, respectively, and another point that was canceled as a direct result of COVID-19-related impacts.¹ In addition, that notice announced that the FAA would prioritize flights canceled due to COVID-19 at designated IATA Level 2 airports in the United States—including ORD, EWR, LAX, and SFO—through May 31, 2020, for purposes of establishing a carrier’s operational baseline in the next

¹ Although DCA and LGA are not designated as IATA Level 3 slot-controlled airports given that these airports primarily serve domestic destinations, FAA limits operations at these airports via rules at DCA and an Order at LGA that are equivalent to IATA Level 3. The FAA reiterates that the relief provided in the March 16, 2020, notice (85 FR 15018), the April 17, 2020, notice (85 FR 21500), and this proposal extends to all allocated slots, including slots allocated by exemption.

corresponding season.² In granting this relief, the FAA asserted its expectation that foreign slot coordinators would accommodate U.S. carriers with reciprocal relief. The FAA further stated that it would continue to monitor the situation and might augment the waiver as circumstances warrant.

Subsequently, following a notice of opportunity for interested persons to show cause why the FAA should or should not extend the relief provided due to continuing COVID-19-related impacts on demand for air travel (85 FR 16989; Mar. 25, 2020), the FAA determined to extend the relief through October 24, 2020 (85 FR 21500; Apr. 17, 2020). The FAA explained its intent to provide carriers with maximum flexibility during this unprecedented situation and to support the long-term viability of carrier operations at slot-controlled and IATA Level 2 airports in the United States.³

Current COVID-19 Situation

Since the FAA's determination in April to extend relief through October 24, 2020, COVID-19 has continued to cause disruption globally and within the United States. The World Health Organization (WHO) reports COVID-19 cases in more than 200 countries, areas, and territories worldwide. For the week ending September 6, 2020, the WHO reported over 1.8 million new COVID-19 cases and 37,000 new deaths, bringing the cumulative total to nearly 27 million confirmed COVID-19 cases and 900,000 deaths.

² The FAA notes that a minimum usage requirement does not apply at designated IATA Level 2 airports in the United States. Moreover, established procedures under the IATA Worldwide Slot Guidelines (WSG) allow for the prioritization of such cancellations in subsequent corresponding seasons consistent with the FAA's policy statement.

³ The FAA is responsible to develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. *See* 49 U.S.C. § 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 C.F.R. § 93.227 at DCA and under the authority of Orders at LGA and JFK. *See* Operating Limitations at John F. Kennedy International Airport (83 FR 46865; Sep. 17, 2018); Operating Limitations at New York LaGuardia Airport (83 FR 47065; Sep. 18, 2018). The FAA has issued extensions of the JFK and LGA Orders until October 29, 2022, which are pending publication in the Federal Register.

International travel recommendations from the Centers for Disease Control and Prevention (CDC) categorize nearly 200 countries, areas, and territories worldwide under Level 3: COVID-19 Risk Is High. Although the State Department's Global Health Advisory has been downgraded from Level 4—Do Not Travel for certain destinations, advisories ranging from Level 2—Exercise Increased Caution to Level 3—Reconsider Travel and up to Level 4 remain in effect for many parts of the world due to continuing impacts of COVID-19. The Department of State advises that challenges to any international travel at this time may include mandatory quarantines, travel restrictions, and closed borders. The Department of State notes further that foreign governments may implement restrictions with little notice, even in destinations that were previously low risk. Accordingly, the Department of State warns Americans choosing to travel internationally that their trip may be severely disrupted and it may be difficult to arrange travel back to the United States.

Within the United States, the CDC reported 6,343,562 total cases and 190,262 deaths from COVID-19 as of September 10, 2020, with 256,159 new cases in the prior seven days. A national emergency related to COVID-19 remains in effect pursuant to the President's March 13, 2020 Proclamation. The CDC advises prospective domestic travelers to consider whether their destination has requirements or restrictions for travelers, and notes that State, local, and territorial governments may have travel restrictions in place, including testing requirements, stay-at-home orders, and quarantine requirements upon arrival.

Written Submissions from Stakeholders

Since the FAA's determination in April to extend relief through October 24, 2020, the FAA has received numerous written submissions from stakeholders reflecting competing interests and views with respect to further continuation of the relief currently in effect at U.S.

slot-controlled and designated IATA Level 2 airports.⁴ IATA, Airlines for America (A4A), and multiple U.S. carriers, including American Airlines, Inc., Delta Air Lines, Inc., JetBlue Airways Corporation, and United Airlines, Inc., as well as a coalition of airlines worldwide and the African Airlines Association (AFRAA), have urged the FAA to extend relief through the Winter 2020/2021 scheduling season, which ends on March 27, 2021. By contrast, others including Airports Council International-North America (ACI-NA), the National Air Carrier Association (NACA), Spirit Airlines, Inc., Allegiant Air, LLC, and Travelers United have urged the FAA to deny requests for additional waivers altogether or impose further limitations. Southwest Airlines Co. proposes a middle ground approach—one additional limited extension of the relief previously provided, with a clear cutoff date—as a possible means of balancing competing stakeholder interests.

Submissions Favoring Relief for the Full Winter 2020/2021 Season

In a letter dated June 30, 2020, IATA and A4A urged the FAA to extend the relief already provided at slot-controlled airports and IATA Level 2 airports in the United States for the full Winter 2020/2021 season. They noted an anticipated \$84.3 billion loss for airlines globally in 2020, and asserted that a full recovery to pre-COVID-19 demand is not expected for at least three years. In support of the requested relief, IATA and A4A pointed to: historically low levels of bookings, with overall bookings down 82% year-on-year for 2020 compared to the outlook for 2019; consumer demand that continues to fall; challenges associated with using established scheduling practices under current conditions; and the need for schedule flexibility to support sustainable loads. IATA and A4A stated that they expect to continue to see big drops in

⁴ Copies of submissions to the DOT and FAA discussed herein concerning the continuation of COVID-related relief at U.S. slot-controlled and designated IATA Level 2 airports, except submissions marked as containing information deemed privileged and confidential, have been placed in the docket associated with this notice.

advance bookings and many last minute bookings (and cancellations) unless and until there is a clear path towards a vaccine and/or treatment for COVID-19 and governments lift existing travel bans and health requirements. Moreover, IATA and A4A asserted that airport capacity is under pressure due to biosecurity measures, leading to reduced capacity and increased connection times. IATA and A4A expect that the requested waiver would provide the flexibility needed for airlines to manage operations in this environment.

In addition, IATA shared with the FAA a position paper concerning a Northern Winter 2020 Slot Waiver. That paper recognizes “the needs of all stakeholders affected by a slot waiver and the desire to ensure a swift recovery is supported and not hindered.” In this paper, IATA expresses agreement to the following principles:

- Suspension of the Use-it or Lose-it rule should apply for all Level 3 slot coordinated airports globally, ensuring no airline or airport is treated differently.
- Level 2 facilitators should prioritize flights cancelled, or otherwise not operated as originally intended, for purposes of establishing a carrier’s operational baseline in the next corresponding season.
- The waiver should not apply to slots newly allocated from the pool for the Winter 2020/2021 season.
- The waiver should not apply to slots that are held by an airline exiting the airport permanently, beginning in the Winter 2020/2021 period, with no intention to return and no utilization of those slots in the Winter 2020/2021 period in keeping with WASG 8.14. This does not prevent slot transfers and operator utilization where local regulation and legislation allows.

- The waiver should require airlines to hand back slots not intended for utilization as soon as possible, but at the latest two weeks prior to planned operation in order to receive alleviation. Airlines should not hold on to slots they will not utilize but return them to the coordinator at the earliest opportunity for reallocation in keeping with WASG 8.5.2.
- Consideration for alleviation should be given to slots that are returned less than two weeks before operation in the event that government advice prevents a planned flight from operating (for example, closure of borders or government advice to prevent all but essential travel).⁵

Moreover, A4A submitted an additional petition, by letter dated September 2, 2020, reiterating its request for an extension of the relief already provided at slot-controlled airports and IATA Level 2 airports in the United States for the full Winter 2020/2021 season.

American Airlines requested an extension of the Summer 2020 full season slot usage waiver for the full Winter 2020/2021 IATA slot season, by letter dated June 15, 2020. American asserted that the waiver would provide flexibility that supports airlines as the demand environment recovers slowly. American stated that this flexibility allows airlines to create flight schedules based on rapidly evolving consumer demand rather than on slot usage requirements.

In a letter dated July 6, 2020, Delta stated that COVID-19 is a highly unusual and unpredictable event that will impact Delta operations for the foreseeable future, and asserted that U.S. carriers need flexibility from slot usage requirements as the impact of COVID-19 continues to severely impact air travel. Absent the continuation of relief from the minimum slot usage

⁵ The FAA notes that the proposal submitted by IATA and A4A references provisions of the new Worldwide Airport Slot Guidelines (WASG) Edition 1, effective June 1, 2020; however, the FAA reiterates that it continues to apply WSG Edition 9 in the United States to the extent there is no conflict with local rules. However, the provisions cited by IATA and A4A were included in WSG Edition 9.

requirements and relief provided at IATA Level 2 airports, Delta indicated that critical improvements, including service expansion to numerous new destinations from JFK and LGA in recent years, as well as capital investments at JFK and LGA for expansion and redevelopment, would be at risk. Delta noted that for November 2020, it projected operating 50%-60% of its slot portfolio in New York and Washington, D.C. airports, and that travel year over year across the Delta network was down 85%.

Leaders of twenty-nine airlines around the world, including United Airlines from the United States, sent a letter addressed to responsible slot authorities dated July 14, 2020, requesting a waiver from the minimum slot usage requirements during the Winter 2020/2021 season. The letter asserts that this waiver is “critical to...manage through this crisis, recover, and provide the significant consumer, community, competitive, employment, and economic benefits synonymous with aviation” and will “help stabilize a very tenuous operational and commercial environment.” This coalition further asserted that “[a]irlines should not have to fly empty planes in order to hold their historical slot rights—it is inefficient and irresponsible.” In its cover letter to the coalition’s submission, United Airlines emphasizes that COVID-19 continues to cause an unprecedented crisis as “cases are rising around the globe and the industry is nowhere near beginning a durable, economic recovery.”

The AFRAA submitted a letter to the FAA dated August 31, 2020, stating that COVID-19 affected air transport adversely, estimating a loss of about \$8.8 billion for African airlines by the end of 2020, and noting that professionals forecast that 2019 activity levels may not return until 2023. AFRAA requests relief until 2022 at JFK, EWR, and ORD on behalf of its members.

In a letter dated September 4, 2020, JetBlue requested a waiver for the Winter 2020/2021 season at JFK, LGA, and DCA, as well as corresponding relief at EWR, on the basis that the

“airline industry continues to suffer from the devastating impact of the COVID-19 global pandemic” and that “[d]omestic traffic remains down between 70 and 80 percent.” The letter states that a waiver would “allow JetBlue to only fly flights commensurate with demand” and ultimately resume full slot utilization as soon as practical.

Submissions Disfavoring Relief for the Full Winter 2020/2021 Season

By letter dated July 9, 2020, ACI-NA expressed opposition to any additional “blanket, long-term waiver,” which ACI-NA asserted would “encourag[e] the underutilization of valuable public resources,” be contrary to the public interest, and negatively impact the economic viability of airports and the communities they serve. Cautioning that it would be premature to consider a waiver for the Winter 2020/2021 season prior to August 31, 2020, ACI-NA stated that “[a]lthough it is very difficult to determine the impact, duration and recovery of the pandemic, [ACI-NA] is seeing evidence of a steady recovery in passenger throughput at [all U.S. slot-controlled and designated IATA Level 2 airports], which is expected to continue in the future.” ACI-NA contended that a blanket waiver will effectively block carriers that are able to provide service from providing price and service competition the public is willing and able to consume, and noted difficulty reconciling public statements of large carriers acknowledging the need to drastically reduce service while also seeking to “retain access privileges to the most lucrative and constrained facilities.” ACI-NA expressed concern that further waiver relief could impair the industry’s ability to react to the changed environment brought on by COVID-19. ACI-NA further advocated that, to the degree that slot waivers may be necessary for the Winter 2020/2021 season, “such relief should only be granted, if at all, closer to the affected season, when the justification can be properly assessed, and only to the extent that these measures are temporary

and targeted, matched to the parameters of the crisis and based on evidence related to the specific markets at the particular times.”

By letter dated July 15, 2020, Spirit Airlines expressed opposition to an extension of the previously granted slot usage waiver and relief announced at IATA Level 2 airports in the United States. Spirit predicted that “legacy incumbent carriers” will continue to seek further extensions of the waiver in future seasons, as they have publicly acknowledged that a full recovery to pre-COVID demand is not expected for at least three years. Agreeing, in part, with ACI-NA’s submission, Spirit further asserted that an extension of the waiver “would have a pernicious effect on both the short and long-term realignment of the industry following the pandemic and is contrary to the public interest” and therefore “public policy should be directed toward enabling the free market to reallocate the use of these slots/authorizations – a public resource – such that passengers receive greater choice among offerings in these key markets.”

In a July 20, 2020, letter, Allegiant Air, through counsel, expressed support for the views expressed by both ACI-NA and Spirit. Opposing an extension of the existing relief provided and stressing the “primacy of the public interest over slot holders’ interests,” Allegiant argued that “the existence of a public health crisis does not justify hoarding of public assets...by any carrier when others are prepared to utilize at least some of those assets, benefitting the public.”

In a submission on July 21, 2020, NACA, which represents 17 air carriers that operate under 14 CFR part 121, likewise expressed opposition to an extension of the previously granted slot usage waiver at U.S. slot-controlled airports and relief at IATA Level 2 airports in the United States through the full Winter 2020/2021 season. NACA expressed support for the individual letters submitted by NACA members Spirit and Allegiant, as well as the views expressed by ACI-NA. NACA asserted that “[p]ermitting legacy carriers to reduce operations for

at least another six months would effectively allow them to control capacity and raise fares at a critical time when the traveling public needs lower fares.”

In a letter dated August 21, 2020, Travelers United (formerly Consumer Travel Alliance) objected to an extension of slot usage waivers at DCA, LGA, and JFK, arguing that further relief “will thwart the free competitive market’s operation.” Travelers United stated that since late March of 2020, incumbent slot holders at DCA, LGA, and JFK have reduced their overall flight operations by approximately 60% to 70% versus a year ago. According to Travelers United, whereas “it will be years before the legacy airlines can resume the service levels present in 2019,” some low cost carriers and ultra-low cost carriers “are ready and willing to provide new service at slot-controlled airports if allowed to do so.” Travelers United asserted that “[t]he free market should be allowed to reallocate the use of these slots, which are actually owned by the public, to airlines that are willing to provide service for the public.”

Southwest Airlines advocated a “middle ground approach” to balance competing stakeholder interests, in a letter dated August 17, 2020. Southwest expressed support for one final extension of the relief already provided, through December 31, 2020, “to provide airlines with planning certainty for the rest of the year.” Southwest stated that “granting usage waivers that would allow slot holders to retain all their slots season after season without providing flights for consumers is not in the public interest.” Accordingly, Southwest urged that as part of the suggested final extension, the FAA should “make clear no additional blanket or individual carrier slot usage waivers will be granted” in connection with COVID-19.

Discussion of Proposed Relief for Slot Holders at U.S. Slot-Controlled Airports (DCA/JFK/LGA)

At the present time, COVID-19 continues to present a highly unusual and unpredictable condition that is beyond the control of carriers. Passenger demand has decreased dramatically as

a result of COVID-19 even as there are some signs of limited recovery in some markets and restructuring of airline operations. The ultimate duration and severity of COVID-19 impacts on passenger demand in the United States and internationally remain unclear. Even after COVID-19 is contained, impacts on passenger demand are likely to continue for some time. The FAA acknowledges the need for slot holders to have some flexibility in decision-making as the severe impacts of the COVID-19 public health crisis continue. However, the Office of the Secretary of Transportation (OST) and the FAA note that what starts as a highly unusual and unpredictable condition may eventually become foreseeable. Indeed, many airlines may well be on their way to restructuring their operations in response to a new, albeit volatile, environment. As asserted in some stakeholder submissions recounted above, there may come a point in time in which ongoing waivers to preserve pre-COVID slot holdings could impede the ability of airports and airlines to provide services that may benefit the economy. The FAA acknowledges the interests of carriers with limited or no access to constrained airports in the United States and the interests of airports in serving their local community and rebounding from this crisis. Further, the FAA agrees that any additional relief from the minimum slot usage requirements at U.S. slot-controlled airports should be narrowly tailored to afford increased access to carriers that are willing and able to operate at these airports, even if on an ad hoc basis until such time as slots revert to the FAA for reallocation under the governing rules and regulations at each slot-controlled airport.

The FAA therefore proposes to make available to slot holders at DCA, JFK, and LGA a waiver from the minimum slot usage requirements due to continuing COVID-19 impacts through March 27, 2021, subject to each of the following proposed conditions:

- (1) All slots not intended to be operated would be required to be returned at least on a monthly basis 4 weeks prior to the start of the month (for example, by November 1,

carriers must hand back all December slots not intended to be operated due to COVID-19) to allow other carriers an opportunity to operate these slots on an ad hoc basis without historic precedence;⁶

- (2) The waiver would not be made available for net newly-allocated slots eligible for historical precedence, based on allocation decisions made prior to the start of the Winter 2020/2021 scheduling season; and
- (3) The waiver would not apply to slots newly transferred on an uneven basis (*i.e.*, via one-way slot transaction/lease) after [INSERT DATE 14 DAYS AFTER PUBLICATION OF FINAL DECISION IN THE FEDERAL REGISTER] for the duration of the transfer. Slots granted historic precedence for subsequent seasons based on this proposed relief would not be eligible for transfer if the slot holder ceases all operations at the airport.⁷

The FAA would apply each of these conditions in considering whether a slot-holding carrier has justification for a waiver based on the non-use of a slot due to COVID-19 impacts. However, the FAA in coordination with OST, will consider granting exceptions from any or all of these conditions if a government's action (*i.e.*, travel restriction) directly prevents the operation of a flight on a particular route that a carrier otherwise intended to operate. This exception would apply under extraordinary circumstances only in which a carrier is able to demonstrate an inability to operate a particular flight or comply with the conditions of the proposed waiver due to a governmental restriction. Carriers would be expected to provide documentation demonstrating that the carrier made all efforts to operate a flight and that it was unable to determine with reasonable advance notice whether it could do so.

⁶ Under this proposal, carriers will provide a minimum of 4 weeks' notice, and notifications will occur on a monthly basis, by the first of the month. Two additional examples to illustrate the condition include: (1) if a carrier wishes to cancel its entire December schedule, it must provide notification by November 1; (2) if a carrier wishes to cancel its schedules from December 16-20, it must also provide notice by November 1. Note that the usual process for treating slots as used for the Thanksgiving and Winter holiday periods provided by 14 CFR § 93.227(l) of the High Density Rule and the JFK and LGA orders will still apply and will not be superseded by this proposal.

⁷ The FAA notes that this provision is not intended to apply to continuing long-term transfers that are already part of the operating environment.

This proposal reflects a delicate balancing of the competing interests of carriers interested in conducting ad hoc operations (including carriers not already operating at the airport) against the interests of incumbent carriers seeking maximum flexibility in making scheduling and operational decisions in an uncertain environment with ongoing COVID-19-related impacts. Further, this proposal reflects a compromise position as between interests of airports, incumbent carriers, and carriers seeking new or increased access with respect to the timeline specified for handback, which is 4-8 weeks before the date the operation would have been conducted.

The FAA believes this approach is appropriate to provide carriers with flexibility during this unprecedented situation and to support the long-term viability of carrier operations at slot-controlled airports while also supporting economic recovery. This proposal balances the interests of carriers that are willing and able to resume operations more quickly, and reduces the potential for a long-term waiver to suppress flight operations for which demand exists. The FAA believes this proposal is largely consistent with many of the principles voiced by IATA in its advocacy for a full season Winter 2020/2021 waiver. Continuing relief for this additional period subject to the proposed conditions is reasonable to balance the interests of all stakeholders to the greatest extent possible under established slot management rules and regulations in the United States. While the FAA is proposing continued, albeit conditional, relief through the Winter 2020/2021 season, carriers should not assume that further relief on the basis of COVID-19 will be forthcoming beyond the end of the Winter 2020/2021 scheduling season.

If the FAA extends relief at slot-controlled airports to March 27, 2021, the FAA expects that foreign slot coordinators will provide reciprocal relief to U.S. carriers. To date, many coordinators have indicated that they will similarly provide additional relief on a conditional basis. To the extent that U.S. carriers fly to a foreign carrier's home jurisdiction and that home

jurisdiction does not offer reciprocal relief to U.S. carriers, the FAA may determine not to grant a waiver to that foreign carrier. A foreign carrier seeking a waiver may wish to ensure that the responsible authority of the foreign carrier's home jurisdiction submits a statement by e-mail to ScheduleFiling@dot.gov confirming reciprocal treatment of the slot holdings of U.S. carriers.

Discussion of Proposed Relief for Operators at U.S. Designated IATA Level 2 Airports (EWR/LAX/ORD/SFO)

The FAA also proposes to extend through December 31, 2020, with conditions, its COVID-19-related policy for prioritizing flights canceled at designated IATA Level 2 airports in the United States, for purposes of establishing a carrier's operational baseline in that portion of the next corresponding season. The FAA recognizes that some carriers may still be considering schedule plans and assessing demand. An extension of relief through the end of the calendar year would provide time for carriers at IATA Level 2 airports to make schedule decisions, market flights, and plan for aircraft utilization, crew, and facilities for the initial months of the Winter 2020/2021 scheduling season before a return to the standard schedule review and facilitation process.

The FAA has previously approved schedules by carriers for the Winter 2020/2021 scheduling season and carriers could choose to operate as approved, apply this proposed policy through December 31, 2020, or submit new schedule proposals for the season. The application of this policy would be contingent on carriers notifying the FAA of any previously approved Winter 2020/2021 schedules no longer intended to be operated, at least on a monthly basis, four weeks prior to the start of the month (for example, by November 1, carriers must notify the FAA of all approved schedules not intended to be operated in December due to COVID-19), in order to make these times available for use on an ad hoc basis by other carriers. Consistent with the proposal for Level 3 airports, the FAA proposes to consider, in coordination with OST, allowing

exceptions to this condition at Level 2 airports under extraordinary circumstances if a government's action (*i.e.*, travel restrictions) directly prevents the operation of a flight on a particular route that the carrier would otherwise intend to operate.

The more limited relief proposed at Level 2 airports as compared to slot-controlled airports reflects that the IATA Level 2 construct differs from the rules and process in place at slot-controlled airports in the United States and at airports globally under the WSG and WASG. The concepts of historic rights, series of slots, or minimum usage requirements do not exist under the Level 2 construct. The voluntary, cooperative nature of Level 2 schedule facilitation is less amenable to a policy that provides priority for flights that are not operated for extended periods of time while potentially denying access to carriers that seek to add service.

Under this proposal, a carrier could receive priority for flights only through December 31, 2020, that were approved but are not operated due to COVID-19-related impacts. For flights after December 31, 2020, priority would be based on approved schedules as operated for the balance of the scheduling season. The FAA would also provide priority consideration in Winter 2021/2022 for flights approved on an ad hoc basis in Winter 2020/2021 if there is sufficient availability within the scheduling limits.

Invitation for Comment

The FAA seeks views and information regarding this proposal. Interested persons are invited to submit comments why the FAA should or should not finalize this decision as proposed, and to submit any information relevant to making this decision. Written views and supporting data may be submitted no later than [INSERT DATE 7 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], by e-mail to the Slot Administration Office

at 7-awa-slotadmin@faa.gov. Information submitted to the FAA may be subject to disclosure under the Freedom of Information Act.

The FAA recognizes that commenters may seek to submit business information that is both customarily and actually treated as confidential. Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments, or any relevant portions thereof, as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under FOIA, and will not place confidential content in the public docket for this notice. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this notice. The FAA will take the necessary steps to protect properly designated information to the extent allowable by law.

After receiving and reviewing comments, the FAA anticipates subsequently providing notice of its final decision.

Issued in Washington, DC on September 11, 2020.

Lorelei Dinges Peter
Assistant Chief Counsel for Regulations
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